

Emperor Vs. Maruti Joti Shinde

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Court : Mumbai

Decided On : Jun-07-1921

Reported in : (1921)23BOMLR820

Judge : Pratt and ;Fawcett, JJ.

Appeal No. : Criminal Appeal No. 151 of 1921

Appellant : Emperor

Respondent : Maruti Joti Shinde

Judgement :

1. The two accused have been convicted of the offence under Section 436, Indian Penal, Code, in that they destroyed by fire on the night of 14th May 1920 the cattle-shed of the complainant in the village of Chikli.

2. It is admitted that the cattle-shed was burnt down that night. The next day the complainant's brother Dadu made a statement to the effect that the fire was accidental and a Paneh-nama was recorded to that effect. The Panch and the Patil state that Dadu said that the two accused had burnt down the shed and that he was afraid to complain against them as they were the leaders of a gang who were the terror of the village.

3. The story given by the complainant and his brother Dadu is that these two accused endeavoured to extort from them a sale-deed of a field and on his refusal

threatened that very night to burn down his cattle-shed. Shortly after that, the complainant was informed by the two Mahar boys Joti and Shankar that the cattle-shed had been burnt down in their presence by the two accused.

4. Now there is no doubt that the fire was not accidental. This is proved by the items of circumstantial evidence to which the Sessions Judge has referred: Firstly, the complainant and his brother did not invoke the assistance of any of the villagers to put out the fire. Secondly, the fact that none of the cattle in the shed were injured corroborates the story of the two boy a Joti and Shankar that the two accused had come to them in the cattle-shed and set fire to it after directing them to untie the bullocks tethered there. Thirdly, the fact that the explanation of the fire given in the Panohnatna cannot but be true for there was no hemp on the upper floor of the cattle-shed.

5. Again there is no doubt that a state of terrorism existed in the village. The complainant and his brother left the village two days after the fire and did not return till sent for by the police some months later. Also an armed Police post was stationed in the village to deal with this gang. These facts make it very probable that the explanation given of the statement of Dadu and the Panohnama of the 15th May are true.

6. Then there is the evidence of Narayan, Dadu and Vithu, that accused attempted to extort the sale-deed from Narayan, and on his refusal threatened to burn down his shed. And there is the direct evidence of the two Mahar boys Joti and Shankar that it was the accused who set fire to the cattle-shed.

7. The statements made by Joti and Shankar are substantive evidence in the case. The Sessions Judge is wrong when he considers their previous statements made to the Police and the Committing Magistrate are relevant only to contradict or negative their statements made in the Court of Session. That is the effect of Section 155 of the Indian Evidence Act; but Section 288, Criminal Procedure Code, goes further and makes such statements ' evidence in the case ', i.e., substantive evidence of the facts therein deposed to. We agree on this point in the interpretation put upon the section in the cases of Emperor v. Dwarka Kurmi I.L.R (1906) All. 683 and Queen-Empress v. Dorciaami Ayyar I.L.R (1901) Mad. 414. In

the latter case the judges said :

There can be no doubt the provision was intended to enable the Court to read the previous evidence as substantive evidence in the case as (he trial where, for the purposes of justice, the adoption of such a course is found necessary by the Judge.

8. Before such evidence is substituted under Section 288, Criminal Procedure Code, it is necessary, as pointed out in Queen-Empress v. Jadub Das I.L.R (1899) Cal. 295 that there should be some reason why it should be preferred. That is a matter of prudence and not of law. Considering the state of terrorism which existed in the village and the probabilities of the case we feel sure that the statements of these two witnesses in the Magistrate's Court was the truth.

9. We accordingly confirm the conviction and sentence and dismiss the appeals.

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